

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL REVISION APPLICATION NO. 232 of 2024

=====

DURGABEN D/O NATVARLAL PARMAR W/O AMRUTBHAI PARMAR
Versus
SABARMATI HARIJAN ASHRAM TRUST & ORS.

=====

Appearance:

MR KV SHELAT(834) for the Applicant(s) No. 1

for the Opponent(s) No. 1,2,3,4,5,6,7

MR KAMAL TRIVEDI, LD. ADVOCATE GENERAL for G H VIRK(7392) for the
Opponent(s) No. 8

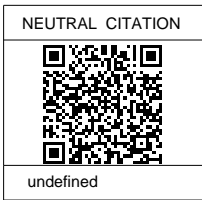
=====

CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 09/05/2024
ORAL ORDER

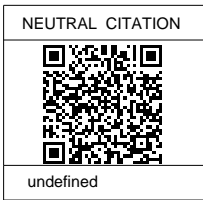
1. Heard Mr. K.V. Shelat, learned advocate appearing for the applicant and Mr. Kamal Trivedi, learned Advocate General appearing for Mr. G.H. Virk, learned advocate appearing on caveat for the opponent No.8.

2. The revisionist – applicant herein is the original plaintiff having preferred HRP Suit No.110 of 2022 before the learned Small Causes Court, Ahmedabad, for declaration as a tenant and injunction that the possession of the plaintiff tenant should not be disturbed or dispossessed without following due process of law. Ad-interim relief came to be granted in the said proceedings below Exh.6 of maintaining status-quo qua the suit property, which has continued. The defendants –



opponents herein gave Exh.30 application under Order VII Rule 11 of the Code of Civil Procedure, 1908 containing that the learned Small Causes Court does not have jurisdiction to grant relief and that, the suit be rejected. On behalf of the revisionist - plaintiff, the advocate for the plaintiff submitted arguments; both for Exh.6 interim injunction application and application below Exh.30 under Order VII Rule 11 of the Code of Civil Procedure, 1908.

2.1 On 20.12.2022, the defendant's advocate applied for adjournment for production of citations. The matter came to be adjourned from time to time continuing the ad-interim relief granted below Exh.6. On 15.03.2023, an application came to be filed seeking adjournment by the learned advocate for the revisionist in view of viral throat infection. While granting adjournment, the ad-interim relief granted below Exh.6 came to be vacated by order dated 15.03.2023. The revisionist approached the learned Small Causes Court to continue the status-quo till the revisionist approach the appellate forum challenging the said order. Learned Small Causes Court extended the status-quo till 23.03.2023 to facilitate the revisionist to approach the appellate forum. On 23.03.2023,



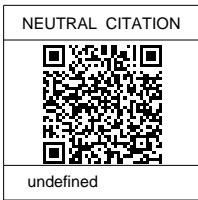
learned Appellate Bench of the Small Causes Court, Ahmedabad, below Exh.7 granted ex-parte interim injunction. In the meantime, the opponent No.8 herein preferred an application for being joined as a necessary and proper party in AFO No.2 of 2023, which came to be allowed by the learned Appellate Bench. The learned Appellate Bench of the Small Causes Court by the impugned order dated 04.05.2024 vacated the ex-parte ad-interim injunction granted on 23.03.2023 below Exh.7.

2.2 Being aggrieved and dissatisfied by the said order vacating the interim relief, the revisionist has approached this Court under Section 29(2) of the Gujarat Rent Act by preferring the captioned Civil Revision Application for the following reliefs:

"A. The Honourable Court be pleased to admit the present Civil Revision Application and be pleased to allow the same after considering the record and proceedings of the case, by quashing and setting aside the Order dated 04.05.2024 passed by the Ld. Appellate Bench of the Small Causes Court at Ahmedabad in Appeal from Order No. 2 of 2023 by the Ld. Appeal Bench Small Causes Court Ahmedabad @ ANNEXURE-B in the interest of justice and be pleased to continue the status quo in respect to the Suit property and directing the Ld. Trial Court to hear and decide the pending applications at the earliest.

B. Pending admission, hearing and final disposal of the revision application, the Hon'ble Court be pleased to stay the execution, implementation, and operation of the impugned Order dated 04.05.2024 @ ANNEXURE-B passed by Ld. Appellate Bench of Small Causes Court Ahmedabad in AFO no. 2 of 2023 in the interest of justice.

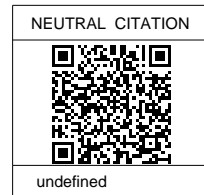
C. The Hon'ble Court be pleased to direct the parties to maintain the status quo with regard to the suit property which relief was in operation



all through out.

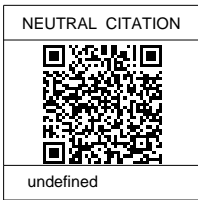
D. The Hon'ble Court be pleased to be pleased to grant such other and further relief/s, in the interest of justice."

3. Mr. K.V. Shelat, learned advocate appearing for the revisionist, submitted that ex-parte ad-interim relief which has continued since 07.04.2022 i.e. the inception of the HRP No.110 of 2022 below Exh.6, be continued till the Exh.6 application and the application below Order VII Rule 11 below Exh.30 are decided by the learned Small Causes Court. It is submitted that the learned Appellate Court has erred in confirming the order passed by the Small Causes Court below Exh.60 vacating the ex-parte status-quo. It is submitted that the learned advocate appearing for the revisionist on 30.04.2024 made a statement before the learned Appellate Bench that the plaintiff is ready to proceed with the application below Exh.30 under Order VII Rule 11 of the Code of Civil Procedure and the application below Exh.6 being injunction application, pending the suit within a week and that, the direction be given to the learned Small Causes Court to hear and decide pending applications till then, the status quo granted by the learned Appellate Bench be continued. However, the Appellate Bench stated that during the pendency of the appeal, why the parties have not proceeded with the



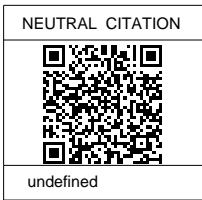
suit. It is submitted that while passing the impugned order, the Appellate Court has relied on the direction in Special Civil Application No.16879 of 2023 regarding determination of compensation, which is factually incorrect in view of the fact that the revisionist had applied and the order of the Collector determining the compensation is subject matter of challenge in Special Civil Application No.851 of 2024, which is pending and subjudice. Placing reliance on the aforesaid submissions, it is submitted that the impugned order dated 04.05.2024 passed by the learned Appellate Court, be quashed and set aside.

4. Mr. Kamal Trivedi, learned Advocate General, submitted that no interference is called for in the impugned order passed by the learned Appellate Court. Reliance is placed on the adjournments taken by the learned advocate appearing for the revisionist from time to time and submitted that, finally the Appellate Court vacated the ad-interim ex-parte status quo granted in HRP No.110 of 2022 on 07.04.2022. It is submitted that in the interregnum, on 30.05.2023, the Collector, Ahmedabad, issued a communication to the revisionist informing the revisionist that she was required to select any one of the three given options for alternative accommodation;



and vacate the suit premises within a period of 10 days. On 22.08.2023, the City Mamlatdar, Sabarmati, addressed a communication to the revisionist informing about the same to select alternative accommodation. The revisionist approached this Court by preferring Special Civil Application No.16879 of 2023 on 09.10.2023, which came to be withdrawn. On 20.10.2023, the Collector, Ahmedabad, passed an order stating inter-alia that the revisionist was required to elect one of the three available options of alternative already offered. The said communication dated 20.10.2023 came to be challenged by preferring Special Civil Application No.851 of 2024, which is pending adjudication. Placing reliance on the aforesaid submissions, it is submitted that no interference is called for in the impugned order passed by the competent Court.

4.1 Mr. Kamal Trivedi, learned Advocate General, also submitted that no error can be said to have been committed by the competent Court while granting adjournments, however, vacated the ad-interim relief in terms of status-quo. Reliance is placed on **(1981) 3 SCC 502** paragraph 6, **(1998) 7 SCC 383** paragraph 6, **1994(1) G.L.H. 324** paragraph 3 and



Civil Revision Application No.610 of 2018 paragraphs 19 and 20.

5. Having heard the learned advocates appearing for the respective parties, the revisionist herein is aggrieved by the impugned order passed below Exh.60 duly produced at page 41 whereby, the application below Exh.60 for extending the ex-parte ad-interim status-quo came to be rejected by the impugned order dated 15.03.2023. The said order was taken in appeal before the Appellate Bench of the Small Causes Court. It is apposite to refer to the reasons assigned by the Appellate Court by order dated 04.05.2024, which read thus:

REASONS

6. POINT NOS.1 AND 2 :

Perused the arguments advanced by the learned advocates of both the parties and record of the case. It is undisputed fact that

1) Plaintiff – Durgaben joined the service as gruhmata in the year of 1983.

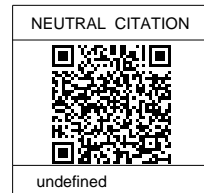
2) Suit premises was given to the plaintiff during her service as an employee in the year of 1990.

3) Plaintiff was terminated from her service on dated 11.05.2002 and thereafter, as per the order of the Hon'ble Labour Court, she was re-instated in her service on dated 21.09.2016.

4) As per the admission of the learned advocate of the appellant, at present age of the appellant is 65 years.

5) Hon'ble High Court has passed the order in Special C. A. No.16879 of 2023, directing the appellant to choose any one of the alternative of rehabilitation within 10 days. However, present appellant – tenant has not selected any of the alternative yet.

6) She has paid the license fee to the respondent no.1-Sabarmati Harijan Ashram Trust after 1997.



7) Respondent nos.1 and 2 are willing to re-develop the Mahatma Gandhi Ashram including the suit premises and has formed Trust namely Mahatma Gandhi Memorial Trust. All the trustees of said new Trust are government authorities.

8) Respondent No.1 has transferred the property of Gandhi Ashram including suit property to the respondent no.2 for re-development of Mahatma Gandhi Ashram.

9) Ex parte interim relief of status quo was granted in H.R.P. Suit No.110 of 2022 and the said suit is originally filed by the appellant on dated 07.04.2022.

6.1 Perused the Rojkam produced by the learned advocate of the respondent at mark 86/2. It shows that ex parte ad interim status quo order for suit property was granted in favour of the plaintiff on dated 07.02.2022 till next date, the said order was extended time to time and finally vacated on dated 15.03.2023 by passing order at exhibit – 60 against which present Appeal From Order is preferred. Between this period, defendant has moved an application under Order 7 Rule 11 of the Civil Procedure Code on dated 02.08.2022 at exhibit – 30. Meanwhile, plaintiff had applied frequently for adjournments before Learned Trial Court and it also reflects from the Rojnama that the arguments were heard by the Learned Trial Court for exhibit – 6 i.e. injunction application and further an application under Order 7 Rule 11 of the Civil Procedure Code on dated 07.12.2022. Before that, defendant has not filed any application for adjournment and willing to proceed with the matter and on the same date 07.12.2022 argued on this application. Matter was adjourned for production of citations to 20.12.2022. On dated 20.12.2022, defendant applied for adjournment for production of citations. Thereafter, on production of citations learned advocate argued for the matter and after that on dated 20.01.2023, 13.02.2023 and 28.02.2023, matter was adjourned for hearing of exhibit – 30 of the appellant. As per the order of exhibit – 56, learned advocate of the appellant was out of station, hence, Learned Trial Court has granted last date for hearing on 20.01.2023. But thereafter, till 13.02.2023, 28.02.2023 and 15.03.2023 learned advocate of the appellant has not argued the matter. Hence, Learned Trial Court has rejected the application for extension of ex parte order and assigned just and proper reason for rejecting said application.

As per Order 39 Rule 3(A) of the Civil Procedure Code, it reads as under :

“Court to dispose of application for injunction within thirty days – Where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability.”

6.2 In the present case, it reveals that the status quo order was originally granted at the time of filing of the suit without issuing notice to the defendant - landlord, but after passing such ex parte order, appellant - plaintiff has not proceeded with the matter. As per the above Rule, such type of application is directed to be disposed off within 30 days then from

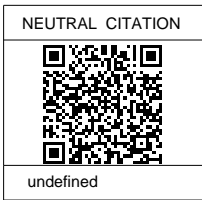


the date on which the injunction was granted and where it is unable so to do, it shall record its reasons for such inability. Considering the Rojnama, it transpires that Learned Trial Court has given ample opportunity for hearing of injunction application to the present appellant – plaintiff but appellant – plaintiff has not proceeded further for one and other reason. Therefore, it is found that the Learned Trial Court has not found any inability to proceed with the matter and hence vacated the exparte statusquo order. Learned Trial Court has just rejected the extension application of appellant – plaintiff which does not fall under the purview of Order 39 of Civil Procedure Code itself and further the impugned order is interlocutory order and it is a discretionary relief and therefore, as per Order XLIII Rule 1 of the Civil Procedure Code, the present Appeal From Order is not maintainable. Only Order upon Rule -1, Rule – 2, Rule – 4 or Rule – 10 of Order 39 is appealable. Hence, as per the above provision, present Appeal From Order does not seems maintainable at law.

6.3 By dis-satisfying with the order below exhibit – 60, the appellant – plaintiff was having an imminent relief to proceed further for the application of injunction which is pending before Learned Trial Court, but instead of availing that opportunity the appellant has preferred the present Appeal From Order and not proceed further before the Learned Trial Court for hearing of injunction application. It is pertinent to note here that the appellant had also not co-operative with the Learned Trial Court for hearing of an application which is pending before Learned Trial Court under Order 7 Rule 11 of the Civil Procedure Code. Further it also found from the Rojnama that even today the injunction application at exhibit – 6 and the application under Order 7 Rule 11 of the Civil Procedure Code is pending for hearing before Learned Trial Court and that too in absence of any stay order for the proceeding of said H.R.P. suit. But after obtaining ad interim injunction in this appeal, appellant has not proceeded with the matter in the trial court. Even though this court has not stayed any proceeding of the trial court till the rejection of her application from 15.03.2023 till more than one year. Therefore it shows that appellant is not interested in proceeding with the matter in the trial court and in present appeal also, as she has frequently applied for adjournments and tried to obtain the benefit of exparte ad interim injunction granted by the trial court. Due to admitted fact in para - 6 that suit premises is allotted to the appellant at the time of her service in defendant no.1 – Trust and she is not complied the directions given by the Hon'ble High Court in Special C. A. No.16879 of 2023 and has not selected the alternative relief and not willing to hand over the possession to the plaintiff after been given full opportunity by the respondent and full opportunity given to the appellant for hearing the application for injunction filed in the H.R.P. Suit No.110 of 2022. Hence, we give answer to Point No.1 in the negative and give answer to Point No.2 by passing following final order:

ORDER

- 1 This Appeal From Order is hereby rejected.*
- 2 Exparte ad interim injunction granted earlier by my predecessor I/c. Chief Judge, on dated 21.03.2023 below exhibit – 7 is hereby vacated.*
- 3 Appellant to bear the cost of appeal for herself as well as for the respondents.”*



6. Having considered the concurrent findings arrived at by the competent Courts, the revisional power under Section 29(2) of the Rent Act for a limited purpose with a view to satisfy itself that the decision of the competent Courts was according to law and this Court cannot substitute its own finding for the one reached by the competent Courts on reappraisal of evidence. It is also apposite to refer to the decision rendered in Civil Revision Application No.610 of 2018 wherein, it is held as under:

“(19) Finally, I may take notice of the judgement of the Apex Court in the case of Helper Girdharbhai (supra) in context of exercise of powers by the High Court under the provisions of Section 29(2) of the Rent Act has held thus:

“16. We must, however, guard ourselves against permitting in the guise of revision substitution of one view where two views are possible and the Court of Small Causes has taken a particular view. If a possible view has been taken, the High Court would be exceeding its jurisdiction to substitute its own view with that of the courts below because it considers it to be a better view. The fact that the High Court would have taken a different view is wholly irrelevant. Judged by that standard, we are of the opinion that the High Court in this case had exceeded its jurisdiction.

17. In the case of Punamchandra Revashankar Joshi v. Ramjibhai Maganlal (1966) 7 Guj. LR 807, the Gujarat High Court after dealing with the Gujarat Amendment Act (XVIII) of 1966 observed that the Legislature had not intended to equate the ambit of the power with the one exercised in an appeal. The authority vested in the High Court under the Amendment still remained only in the domain of the jurisdiction and power of revision and no further. The Amending provision, therefore, only related to procedure and not to any rights of the parties.

18. This Court in the case of Bhai Chand Ratanshi v. Laxmishanker Tribhovan, (1982) 1 Ren. C.J. 242; (AIR 1981 SC 1690) observed that where lower courts applied their minds properly in deciding a matter under Section 13(2) of the Bombay Rent Act, the High Court could not substitute its own finding for the one reached by the courts below, on a reappraisal of evidence under Section 29(2) of the Act as substituted by the Gujarat Act 18 of 1965. This Court

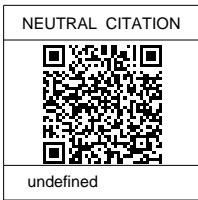


reiterated that although the High Court had wider power than that which could be exercised under Section 115 of C.P.C., yet its revisional power could only be exercised for a limited purpose with a view to satisfying itself that the decision was according to law. The High Court could not substitute its own finding for the one reached by the courts below on a reappraisal of evidence."

(20) Thus, as enunciated by the Supreme Court, this Court can exercise its revisional power under section 29(2) of the Rent Act for a limited purpose with a view to satisfy itself that the decision of the Courts below was according to law and the High Court cannot substitute its own finding for the one reached by the Courts below on reappraisal of evidence."

7. Further, both the competent Courts have thought it fit to vacate the ex- parte ad-interim relief by way of status – quo concurrently. It is apposite to refer to the ratio as laid down in case of ***Patel Valmik Himatlal & Ors. vs. Patel Mohanlal Muljibhai***, reported in **(1998) 7 SCC 383** more particularly, paragraph 6 wherein, it is held that the revisional powers can be exercised only to correct the errors which make the decision contrary to the law or which errors go to the root of the decision but it does not vest the High Court with the power to rehear the matter and re-appreciate the evidence. Mere fact that a different view is possible on re-appreciation of the evidence, cannot be a ground for exercising the revisional jurisdiction.

8. The contention raised by Mr. Shelat, learned advocate appearing for the revisionist that it was submitted before the competent Court to proceed with the application below Exh. 30



under Order VII Rule 11 of the Code of Civil Procedure and application below Exh.6, did not weigh with the learned Appellate Court. It is within the domain of the competent Courts whether to continue the ex-parte ad-interim relief or not. This Court is not inclined to exercise its revisional jurisdiction ; the competent Courts having arrived at the said decision taking into consideration the facts and merits.

9. For the aforesaid reasons and in light of the position of law, as referred above, this Court is not inclined to interfere with the impugned order dated 04.05.2024 passed by the learned Appellate Bench of Small Causes Court at Ahmedabad in Appeal From Order No.2 of 2023. The application below Exh.6 being injunction application pending the suit and the application below Exh.30 under Order VII Rule 11 of the Code of Civil Procedure, 1908, be decided by the competent Court independently and in accordance with law on merits.

10. The present Civil Revision Application stands dismissed accordingly.

(VAIBHAVI D. NANAVATI, J)

NEHA